

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCH "SMC" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**  
**AND**  
**MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 3303/MUM/2023**  
**Assessment Year: 2017-18**

Hansa Girish Shah,  
4, Deepak Building,  
Dr. Moose Road,  
Mumbai-400602.  
**PAN NO. ACBPS 6121 K**  
**Appellant**

**Vs.**

ACIT, Circle1,  
Room No. 22, B Wing, 6<sup>th</sup> floor,  
Ashar IT Park, Road, No. 16Z  
Wagle Ind. Estate-400604.

**Respondent**

**Assessee by** : Mr. Subodh Ratnaparkhi  
**Revenue by** : Ms. Kakoli Ghosh, Sr. DR

Date of Hearing : 30/01/2024  
Date of pronouncement : 31/01/2024

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the assessee is directed against order dated 27.07.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)'] for assessment year 2017-18, raising following grounds:

- 1. The Hon. CIT (A) erred in confirming addition of Rs.6,93,069/- u/s 68 r.w.s. 115BBE of the I. Tax Act 1961, holding agricultural income of the appellant to be over stated and consequently unexplained cash credit u/s 68 r.w. 115BBE of the CIT(A) I.T Act, 1961, not appreciating that such income was exempt from tax u/s 10(1) of the I.T Act, 1961 as earned from carrying out of agricultural operations and ignoring the evidences placed on record vis-à-vis the agricultural sale proceeds etc. The addition of Rs.6,93,069/- being not justified may kindly be deleted.*



2. *The Hon. CIT (A) erred in upholding the addition of Rs. 7,54,855/- as unexplained money u/s 69A r.w.s 115BBE of the I.T Act, 1961, on account of cash deposits in the bank accounts of the appellant, not considering the explanation that such cash deposits were out of the opening cash in hand reflected by the balance sheet as at 31.03.2016 and that the provisions of section 69A dealing with unexplained money were not attracted to the facts of the matter. The addition of Rs. 7,54,855/-disputed in appeal may kindly be deleted.*
3. *Without prejudice, the Hon. CIT (A) erred in not granting benefit of telescoping (set off) of Rs.6,93,069/- being overstated agricultural income determined by the Id AO against cash deposit of Rs.7,54,855/- in the bank accounts, thereby resulting in double addition to the extent of Rs.6,93,069/- once as income and then again on account of deposit of such income in the bank accounts. The addition to the extent of Rs.6,93,069/- may kindly be deleted.*

2. Briefly stated facts of the case are that the assessee filed return of income for the year under consideration on 28.09.2017. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices under Income-tax Act, 1961 (in short 'the Act') were issued and complied with. In the assessment completed on 22.12.2019 u/s 143(3) of the Act, the Assessing Officer made two additions, **firstly** addition u/s 68 of the Act amounting to Rs.6,93,069/- for credit against agriculture income held as unexplained and **secondly**, addition for unexplained cash deposit of Rs.7,54,855/- in bank accounts.

3. On further appeal, the Ld. CIT(A) upheld the additions. Aggrieved, the assessee is in appeal before the Tribunal by way of raising grounds as reproduced above.

4. In ground No. 1 of the appeal, the assessee has challenged the finding of Ld CIT(A) of holding the income from agricultural as



unexplained cash credit. The briefly stated facts related to the issue in dispute are that the assessee owned about 6.5 acres of agricultural land in the Kutch district of Gujarat. It was claimed that land was given to caretaker for agriculture purpose under agreement that 80% of the share of agriculture produce would be retained by the assessee. The main crop raised was castor plant and the assessee got total 22,975 KG as his share of the agriculture produce which was sold at local APMC market for ₹ 8, 70, 315/-. According to the Assessing Officer the average yield of production of Castor crop in the Kutch district was around 235 Kg per Acre for the year under consideration, whereas the yield shown by the assessee was in the range of 4415 Kgs ( 28,700kgs/6.6 acre) , which being too excessive, the assessee was asked to explain such excessive production. But the assessee failed in doing so , thus, the AO estimated the agriculture income according to the average production of Castor for Kutch District at Rs. 1,24,246/- and the balance amount of Rs. 6,93,069/- out of the agriculture income of Rs, 8,17,315/- was held as unexplained cash credit under section 68 of the Act. The Id CIT(A) also sustained the addition.

4.1 Before us, the Ld. Counsel for the assessee submitted that addition u/s 68 of the Act is not justified because source of the receipt was duly explained. The Ld. Counsel further submitted that yield of the production of the agricultural produce in the case of the assessee is better as compared to the others because of the



personal attention being paid by him. He further also submitted that the agriculture produce sold by assessee also included produce out of the production for last year production and therefore, no addition is justified.

4.2 We have heard rival submission and perused the relevant material on record. We find that in response to query of Assessing Officer query it was submitted by the assessee that the assessee owned 6.5 acres of the agriculture land at Village Vanoi in Kutch District Gujarat. On this agriculture land, the assessee had produced 'castor', 'gawar' and other crops during the year. It was submitted that assessee employed a caretaker to whom 20% of the agricultural product was given. The assessee submitted the she had sold castor seeds of 22,975 kgs and has earned her share of income at Rs. 8,70,315/-. In support, sales bills of the agricultural produce sold by the assessee were submitted during the assessment proceedings. However, the Assessing Officer referred to the yield per acre for castor seed productivity in Kutch District, which was 235 kg per acre. Whereas the yield shown by the assessee was 4,415 kg per acre and therefore, the Assessing Officer asked the assessee to explain and justify the high productivity but no explanation was submitted by the assessee except that agricultural produce sold might also include the production from the adjoining land by her husband and therefore, the Assessing Officer estimated production in the case of the assessee at 3280 kg and which was valued at



Rs.1,24,246/-. After giving benefit for the amount of Rs.1,24,246/- he made addition for balance amount of Rs.6,93,069/- out of agriculture of Rs.8,17,315/- shown by the assessee.

4.3 We have also examined the average agricultural income of the assessee in earlier years submitted by the Id Counsel for the assessee for explanation of cash deposit in banks, which is in the range of Rs. 3-4 lakhs, and therefore, income of Rs more than 8.00 lakhs need supporting evidences. In the facts of case, we are of the opinion that since, the Assessing Officer has decided the issue on the crop yield of castor available in public domain but the assessee could not substantiate its yield by way of any documentary evidence. Therefore, we feel it appropriate to restore this issue back to the file of the Assessing Officer, for ascertaining the yield in the case of the assessee from any expert in the field of agriculture and thereafter may decide the issue in accordance with law after providing opportunity f being heard. The ground No. 1 of appeal of the assessee is accordingly allowed for statistical purposes.

5. The ground No. 2 of the appeal of the assessee relate to cash deposit of Rs.7,54,855/- in post demonetization period. Before us, the Ld. Counsel for the assessee submitted that said cash was generated as a result of agricultural income in earlier years which was received by the assessee in cash. The assessee had filed a detailed of cash agricultural income for earlier years. In the interest of justice, we feel it appropriate to restore this issue back to the file



of the Assessing Officer for verification of the claim of the cash agricultural income of the assessee in the light of the crop yield and the expenditure incurred if any by the assessee on the household or otherwise and then determine the availability of cash in the hand of the assessee for justifying the cash deposit. The ground No. 2 of the appeal of the assessee is allowed for statistical purposes.

6. In ground No. 3 the assessee is seeking telescoping of the addition of the unexplained cash credit u/s 68 of the Act of Rs.6,93,069/- against cash deposit of Rs.7,54,855/- in bank account. However, we find that the unexplained cash credit has been appearing as credited by way of cheque in bank account which has not further transmitted as cash deposit in bank account and therefore, said addition made u/s 68 of the Act cannot explain the source of the deposit in bank account. Thus, the claim of the telescoping is rejected. The ground No. 3 of the appeal of the assessee is accordingly dismissed.

7. In the result, the appeal of the assessee is partly allowed for statistical purposes.

**Order pronounced in the open Court on 31/01/2024.**

**Sd/-**  
**(KAVITHA RAJAGOPAL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;  
Dated: 31/01/2024  
Rahul Sharma, Sr. P.S.



**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**